

NANCY KINNEY, CHARLES  
TOWNSLEY, MICHAEL SAURO,  
WALTER NOFFSINGER,  
ROSA DAVIDSON,  
MICHAEL KELLY, TOM KIERL,  
CONSTANCE LEWIS, SHERI PARR,  
PAUL PHAM, ALVARO PAIZ, TITON  
HOQUE, CHRIS MANCUSO, WILBERT  
TALMADGE, JANET GELPHMAN,  
THANH DO  
Plaintiffs,

Civil Action No.: 1:20-cv-00969-LY

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,  
Defendant.

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Plaintiffs Nancy Kinney, Tom Kierl, Alvaro Paiz, Constance Lewis, Sheri Parr (hereinafter “Plaintiffs”) in the above-entitled and numbered cause and submit Unopposed motion for leave to file a redacted Sur-Sur-Reply in further opposition to IBM’s Motion to Compel Arbitration.

## **I. RELIEF REQUESTED**

1. IBM filed a Motion to Compel Arbitration and Dismiss Certain Plaintiffs on October 23, 2020 (Dkt. #10). Plaintiffs filed a Response in Opposition on November 20, 2020 (Dkt. # 16). IBM filed a Reply in Support on December 11, 2020. (Dkt. # 23).

2. On December 18, 2020 Plaintiffs filed a motion for Leave to File a Sur-reply (Dkt. # 27), wherein Plaintiffs argued a Plaintiffs needed to conduct meaningful discovery in order to provide specifics as to IBM's fraud. This Court granted leave to file on March 1, 2021. Now, Plaintiffs seek permission of this Court to file the attached redacted Sur-Sur-Reply. Pursuant to Local Rules, however, no other motion practice is permitted without this Court's approval.<sup>1</sup>

3. Plaintiffs understand that the Local Rules limit motion practice because the Court expects issues to be addressed succinctly so as not to waste judicial resources on excess arguments. However, Plaintiffs respectfully submits that there is good cause for this Court to consider further arguments on this issue.

4. Here, Plaintiffs seek to file this redacted Sur-Sur-Reply in order to brief this Court on documents Plaintiffs have recently obtained in the Discovery process that supports Plaintiffs' arguments that IBM induced arbitration agreements via fraud. Accordingly, Plaintiffs seek permission to file this Sur-Sur-reply so that the Court may consider the full weight of the legal and factual issues in controversy, and so that justice may be done.

5. Plaintiffs' counsel has reached out to counsel for IBM and discussed the need for this Sur-Sur-reply and accompanying exhibits. After conference, IBM's counsel confirmed in writing that they are unopposed to the filing of this Sur-Sur-Reply *so long as certain quotations were redacted from the public filing of this motion*, and that Plaintiffs *only* file the unredacted

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<sup>1</sup> See W.D. Tex. Civ. R. CV – 7 (f)(1).

version of the motion and accompanying exhibits under seal. Plaintiffs have acceded to IBM's request—despite Plaintiffs' objections

## **II. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Court grant this unopposed motion and to allow Plaintiffs to file this redacted Sur-Sur-Reply in further opposition to IBM's Motion to Compel Arbitration.

Respectfully submitted,

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**Counsel for the Plaintiffs**

CERTIFICATE OF CONFERENCE

Counsel for Plaintiffs complied with the Court's meet and confer requirement under Local Court Rule CV-7(i). On April 28, 2021, Plaintiffs' counsel conferred via email with IBM's counsel about Plaintiffs' motion for leave to file a sur-reply. Counsel for IBM is unopposed to Plaintiffs' Motion



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Heidi A. Coughlin

CERTIFICATE OF SERVICE

I hereby certify that on April 30<sup>th</sup>, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the Court and Defendant's counsel of record.



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Heidi A. Coughlin